CHAPTER 10
ENVIRONMENTAL PERMITS

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10. ENVIRONMENTAL PERMITS

10-1 OVERVIEW

Florida Department of Transportation (FDOT) construction activities are regulated by numerous environmental rules and regulations administered by Federal, State, local, and special district governing agencies. These agencies have established environmental programs to conserve, protect, manage, and control the air, land, water, and natural resources of the State or the United States. Environmental permits are usually required, unless exempted by statute or rule, for any activity which is expected to be a source of air, ground, or surface water pollution, including the discharge of untreated rainfall moving over and through the ground; for dredging or filling in, on, or over waters of the State or the United States, including wetlands; or, for activities occurring in navigable waters of the United States.

Environmental permits are intended to ensure construction and operation activities do not cause adverse environmental, water quality, or water quantity impacts. Limited types of construction activity may be exempt from the permitting requirements of the regulatory agencies. These limited construction activities may include milling and resurfacing, culvert extension or replacement with no wetlands or surface water impacts, and minor maintenance or repairs. Certain activities are exempt because they satisfy very specific regulatory criteria designed to protect water quality and minimize adverse impacts to area resources. Therefore, exempted FDOT activities must be performed in accordance with all criteria stated in the language of the exemption. In addition, the regulatory agencies have statutory authority to grant variances and waivers, and approve alternative procedures to their rules and regulations. A project granted an exemption, variance, or waiver by one or more regulatory agencies may still require permits from other State, Federal, or local regulatory agencies.

Failure to comply with the conditions of issued permits or violations of unpermitted activities at the State or Federal level may result in an enforcement action. The action may be the issuance of an after-the-fact permit, a negotiated agreement (consent order), civil or criminal penalties, or a combination of any of the above.

10-1.1 Regulated Construction Activities

Permitting requirements have been enacted by legislation and are administered by the regulatory agencies. The agencies have established distinct thresholds, exemptions, and permit conditions specific to their agency. Environmental permits are required from one or more regulatory agencies for most land alterations, including addition of impervious surface; construction, alteration, or abandonment of stormwater management facilities; and, wetlands or surface water impacts. To obtain a permit, the applicant must provide reasonable assurance that State and Federal water quality and quantity standards will not be violated,

and will not be contrary to the public interest for activities located in, on, or over wetlands or other surface waters. However, for a project which is located in an Outstanding Florida Water, the applicant must provide reasonable assurance that the project is clearly in the public interest.

Regulated activities are reviewed during a permit application process. Permit applications are reviewed by the agencies for their engineering soundness and the effect on flood protection, water quality, and the environment. Pre-application meetings are encouraged by the agencies to assist in determining the permitting requirements. Preliminary coordination with all jurisdictional agencies may take 6 to 12 months depending on the complexity of the construction and the environmental sensitivity of the project area. Florida administrative rules and regulations require an agency to notify an applicant of any apparent errors or omissions and request any additional information needed to clarify the information on an application or in any subsequent submittal within 30 days after receipt of an application for permit or receipt of additional information. An application is considered complete by a regulatory agency when reasonable assurance has been provided that the activities proposed are consistent with the rules and regulations of the agency. A permit is issued or denied within 90 days after the application has been deemed complete, or upon written request by an applicant for the regulatory agency to begin processing the application.

10-1.2 Definitions

Note: Legal definitions, as described in Florida Statutes, Florida Administrative Code Rules, and Federal regulations are very specific for the purpose intended. The definitions provided in this section are NOT legal definitions, but are summarized descriptions intended for use only as a general guide regarding some of the terminology commonly encountered during the permit process.

1. Construction Activity

   Any onsite activity which will result in the creation of a new stormwater management system, including the building, assembling, expansion, modification, or alteration of the existing contours of the property, the erection of buildings or other structures, or land clearing.

2. Dredging And Filling

   Dredging refers to the excavation and removal, or exposing to view, of material by any means in waters of the State or the United States. Filling refers to the deposition of material by any means in waters of the State or United States.

3. Landward Extent

   The term landward extent is used to include areas such as floodplains and marshes which may extend landward of the primary waterbody.

4. Mean High Water Line

The average height of high tides over a period of approximately 18.6 years.

5. Navigable Waters

Navigable waters of the United States are defined as those waters that are subject to the ebb and flow of the tide landward to the mean high water line, and/or all waters which are presently used, or have been used in the past or may be susceptible to use to transport interstate or foreign commerce.

6. Ordinary High Water Line

The point where the presence and action of the water are so common and usual as to leave a mark upon the soil.

7. Sovereign Lands

Sovereign Lands include all lands beneath navigable waters, extending to the mean high water line or ordinary high water mark for which title has not been validly transferred. These lands became vested in the sovereign State of Florida upon its admission to the Union on March 3, 1845. Sovereign lands encompass beaches between mean high water and mean low water lines, islands within navigable waters, lands beneath lakes and rivers, and the lands beneath the Gulf of Mexico and the Atlantic Ocean.

8. Stormwater Management System

A system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over drainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system. Stormwater management systems include dams, impoundments, reservoirs, works, appurtenant works, and dredge and fill areas.

9. Waters of the State

Waters of the State include, but are not limited to, rivers, creeks, lakes, streams, pools, wetlands, marshes, and springs to the ordinary high water line or landward extent; tidal waters to the mean high water line or landward extent; or, underground waters. Waters of the State are defined by indicators such as a predominance of wetland-dependent vegetation in conjunction with hydric soils, or hydrologic evidence of regular or periodic inundation or saturation.

10. Waters Of the United States

Waters of the United States are defined as those waters that are subject to the ebb and flow of the tide, landward to the mean high water line. Federal wetlands jurisdictional authority (waters of the United States) includes most areas which are

within State wetlands jurisdiction, navigable waters and tributaries adjacent to navigable waters, and wetlands which are isolated from other water bodies. There is usually considerable overlap in jurisdiction between State and Federal agencies regarding the boundaries of wetland areas.

11. Wetlands

Those areas that are inundated or saturated by surface water or ground water at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Florida wetlands generally include swamps, marshes, bayheads, bogs, cypress domes and strands, sloughs, wet prairies, riverine swamps and marshes, hydric seepage slopes, tidal marshes, mangrove swamps, and other similar areas.

12. Works

Works are all artificial structures, including but not limited to, ditches, canals, conduits, channels, culverts, pipes, and other construction that connects to, draws water from, drains water into, or is placed in or across waters of the State.

10-1.3 Federal Permitting Authority

The U.S. Environmental Protection Agency (EPA) is currently responsible for the National Pollutant Discharge Elimination System (NPDES) program. An NPDES permit is required for all discharges to waters of the United States from construction sites and stormwater management facilities. For purposes of this section, all surface waters and wetlands within the state of Florida should be considered waters of the United States. Although highways have not been classified as industrial sites, highway construction has been classified as an industrial activity. An NPDES construction permit is required for all FDOT construction activities identified in the NPDES General Permit for Storm Water Discharges From Construction Activities published in the Federal Register, Vol. 63, No. 61, Tuesday, March 31, 1998). EPA is expected to delegate the NPDES stormwater permitting program to the Department of Environmental Protection (DEP) by October, 2000.

The U.S. Army Corps of Engineers (ACOE) has the authority to issue permits for activities involving the discharge of dredge and fill materials into waters of the United States, including wetlands. A permit from the ACOE is also required to build any structure in navigable waters. The ACOE may request comment from other agencies including the U.S. Fish and Wildlife Service (USFWS); Florida Game and Fresh Water Fish Commission (FGFWFC); and, the Florida Department of State, Historic Preservation Office (SHPO).

The U.S. Coast Guard (CG) issues permits for bridges or causeways in or over navigable waters of the United States, and for causeway construction in all tidal waters of the United States. Permits must also be obtained from other permitting agencies for any of

the associated dredge, fill, and stormwater discharge features of the project. The Federal Highway Administration (FHWA) can determine whether a project will require a CG permit (PD&E Part 1, Chapter 3).

10-1.4 State Permitting Authority

The Department of Environmental Protection (DEP) is the State's primary environmental regulatory agency. DEP has delegated much of the permitting authority for many programs regulated by the Environmental Resource Permit (ERP) to the State's five Water Management Districts (WMD). DEP has, however, retained oversight authority regarding review and final action for projects such as industrial, hazardous, solid, and domestic waste facilities; navigational dredging; high speed rail facilities; magnetic levitation demonstration projects; marinas; coastal activities proposed seaward of the "Coastal ConstructionControl Line" or a point 50 feet landward of the mean high water line; coastal structures such as groins, jetties, seawalls, revetments, and breakwaters.

The five Water Management Districts include: Northwest Florida, Suwannee River, St. Johns River, South Florida, and Southwest Florida. With the exception of Northwest Florida, all WMDs have been delegated permitting authority by DEP for discharges, including stormwater discharges; dredge and fill activities in, on, or over waters of the State; construction activities which discharge to waters of the State; aquifer recharge; construction of wells; agriculture and silviculture activities; and, "state sovereignty lands" which include all tidal lands and submerged lands under navigable waters owned by the State of Florida. The permitting authority of the Northwest Florida WMD is primarily limited to agriculture and silviculture activities. The WMDs also regulate consumptive uses of water. DEP or the WMD should be consulted regarding the current operating agreement to verify which agency has permitting authority on the proposed activity.

10-2 REGULATORY PERMITTING

Since 1995 all land alteration activities or works affecting water resources have been regulated under one type of State permit. The ERP was enacted in 1995 by the Florida Environmental Reorganization Act which sought to consolidate DEP's wetland resource permit (dredge and fill) and the WMD's surface water management permit, except in the Northwest Florida WMD where these activities remain regulated by DEP. The ERP seeks statewide consistency in the WMD's and DEP's permitting standards and criteria, but variations are allowed for the diverse ecosystems and natural resource concerns found throughout Florida.

In order to obtain an ERP, FDOT must provide reasonable assurance that proposed activities will not adversely impact waters of the State, by satisfying specific criteria and

meeting established standards. The criteria provides for the protection of wetlands and other natural resources, peak attenuation of stormwater discharges to receiving waters, and pollution abatement. The procedure for determining the extent of agency wetland jurisdiction is discussed in detail in the PD&E Manual, Part II, Chapter 18. The purpose of the peak attenuation criteria is to ensure that surface waters do not cause flood damage to property, impact public safety, adversely impact adjacent lands, or impact other natural resources. Permit applicants must demonstrate that discharges from surface water management systems will meet historic discharges or current WMD criteria.

Surface water management systems must be designed so that discharges will meet state water quality standards as set forth by DEP in Chapter 62-302, Florida Administrative Code Rule (F.A.C.). If the systems are designed in accordance with the WMD's water quality criteria, it is presumed that they will meet the state water quality standards. The WMD's water quality criteria are based upon the retention/detention and exfiltration capabilities of the surface water management system. A retention system may be designed to hold stormwater runoff onsite until it can percolate, exfiltrate, or evaporate. A detention system may be designed to detain the water through a system of swales and detention ponds until the stormwater runoff is discharged off-site. In some instances wetlands may be utilized as stormwater management systems, however, specific performance criteria have been established to ensure water quality standards are not violated and the wetland's hydroperiod is not adversely altered. Factors such as the type and extent of proposed construction activity, special basin criteria, amount of existing and proposed impervious area, adjacent land uses, location and designation of the downstream receiving body, or onsite conditions determine the type of stormwater treatment system which will be required.

Additionally, compensation is usually required for any encroachment into the floodplain between the estimated seasonal high water level and the one hundred year storm event. Individual WMDs should be consulted to determine the amount of compensation required. Early coordination between the WMDs, DEP and FDOT is essential to determine standards, criteria, or special designations which may apply to specific underground or surface waters. Standards and criteria are usually more stringent for specially designated waters.

The level of protection for a waterbody depends on the defined water quality objectives of that water body and its classification. Federal and State laws have established a water body classification system. The State of Florida has classified every surface water body according to its highest and most beneficial use. Goals for maintaining and enhancing these designated uses are attained at the State and Federal levels through implementation of various environmental programs, such as permitting programs.

10-2.1 Water Body Classifications

In Florida, five water body classifications have been established for surface waters and are as follows:

1. Class I Waters are designated as potable or drinking water sources;

2. Class II Waters are designated for shellfish harvesting and propagation;

3. Class III Waters are intended for recreation, propagation and maintenance of a healthy, well-balanced population of fish and wildlife;

4. Class IV Waters are used for agricultural purposes; and,

5. Class V Waters are for navigation, utility, and industrial use.

In addition to Class I, II, III, IV, and V classifications, many Florida waters have received additional levels of protection due to their exceptional recreational or ecological significance. More stringent permitting standards and criteria apply for specially designated waters. Examples of water body designations include Outstanding Florida Waters, Aquatic Preserves, Outstanding National Resource Waters, Wild and Scenic Rivers, and National Estuarine Research Reserves. Information regarding water classifications and special designations may be obtained from the appropriate WMD, and by referring to PD&E Manual, Part 2, Chapters 19, 20, 21, and 23.

10-2.2 Environmental Resource Permit

The WMD or DEP issues several types of ERPs: Conceptual, General, Individual, and Mitigation Bank. Slight variances in the types of permits, thresholds, and performance criteria exist within each WMD and DEP. Each WMD has adopted minimum design and operational criteria that the Department must meet to ensure construction and operation of the proposed work will not adversely affect water resources, public health, safety, or welfare.

A Conceptual ERP may be issued for master development plans which are developed in phases. Conceptual approval provides assurances that overall concepts are consistent with rules in effect at the time of approval and to ensure permitting consistency during an extended sequence of development. A conceptual approval does not authorize any construction activity and a General or Individual ERP must be obtained before beginning the construction activities.

General ERPs are issued for usually less extensive projects which satisfy specific requirements of DEP or of the delegated WMD. General ERPs are issued as either Noticed or Standard General ERPs, generally resulting in faster processing. A Standard General ERP limits the total project acreage and the amount of wetland or surface water impacts. A Noticed General ERP is issued for specific activities such as installation of riprap or fences; construction or maintenance of culverted driveways or roadway crossings and bridges; other minor activities; and, to the FDOT for minor bridge alteration, replacement, maintenance, and operation, and for minor activities with existing FDOT right of way.

South Florida WMD also designates a No Notice General ERP. The No Notice General ERP is limited to projects whose total land area is less than ten acres with less than two acres of impervious surface, and no dredging or filling within wetlands or surface waters.

St Johns River WMD also designates the Environmental Resource Stormwater Permit. The Stormwater Permit is generally limited to projects of less than forty acres in total land area except in specially designated basins, less than twelve acres of impervious surface when the impervious surface equals forty percent or more of the project acreage, or that involve no impacts to wetlands or surface waters.

An Individual ERP is required for projects which are unable to satisfy the criteria of the general permit, or for specific regulated activities. WMD Governing Board approval is required for all Individual ERPs.

10-2.3 Authorizations To Use Sovereign Submerged Lands

When a proposed activity occurs on State-owned submerged lands, a Title, Easement or Letter of Consent to use sovereign lands must be obtained from DEP or the delegated WMD. Except in Northwest Florida WMD this authorization request is part of the ERP process and is coordinated between the WMD and DEP. In Northwest Florida WMD, state lands authorization is coordinated between the DEP District Office and the DEP Division of State Lands upon submittal of the wetlands resource permit application by FDOT. Considerable time is usually required to obtain authorization to use sovereign submerged lands, therefore, it is essential that early coordination between FDOT and the WMD or the DEP occur in the project development process to avoid potential project delays.

10-2.4 Local Environmental Permits

In addition to Federal and State environmental agencies, local government environmental agencies may also regulate water or flood control activities and activities occurring in jurisdictional wetlands. Close coordination between FDOT and local government environmental agencies should occur early in the process of project development to ensure local permitting requirements have been adequately addressed.

10-2.5 Coastal Construction Permits

Coastal construction is also regulated by the provisions of Chapter 161, Florida Statutes (F.S.). The Florida legislature has defined coastal construction as... "any work or activity which is likely to have a material physical effect on existing coastal conditions or natural shore and inlet processes." The DEP is charged with establishing Coastal Construction Control Lines (CCCLs) which define the extent of beach/dune system which is subject to severe fluctuations under the influence of a 100-year storm; or in some circumstances, further landward. CCCLs are established on a county-by-county basis along the sand beaches of the state. Once established, the CCCL is recorded in the county's public records. In general, the DEP has permitting jurisdiction over all coastal construction seaward of the coastal construction control lines.

10-2.6 Consumptive Use of Water Permits

Consumptive use of water is broadly defined as any use of water which reduces the supply from which it is withdrawn or diverted. The consumptive use of water in the State of Florida is regulated by the WMD, as prescribed in Part II of Chapter 373, F.S. This authority applies to public water supplies, agricultural and landscape irrigation, contamination clean-up, commercial/industrial uses, and dewatering/mining activities. Individual Permits are issued for projects which: (1) exceed a daily use of 100,000 gallons per day (gpd); or (2) in a "Reduced Threshold Area", exceed 10,000 gallons per day on an average day and/or 20,000 gallons per day on a maximum use day. The General Permit is for water use that is less than the Individual Permit threshold volumes.

10-2.7 Groundwaters, Discharges and Withdrawals

Groundwater discharge permits are required for construction and operation of facilities which discharge into Florida's groundwater, such as drainage and injection wells. This program is administered by the DEP and requires that State groundwater standards be met before a permit can be issued. Additionally, the WMDs have been given the responsibility to permit water well construction activities.

10-2.8 National Pollutant Discharge Elimination System (NPDES) General Permit For Discharge From Construction Activities

Two types of NPDES permits are used for most FDOT activities: (1) NPDES General Permit For Discharges From Construction Activities; and, (2) the NPDES Municipal Separate Storm Sewer System Permit (MS4), both managed by the FDOT District NPDES Permit Coordinator.

EPA has issued a General Permit For Stormwater Discharges From Construction Activities in Florida. All FDOT activities classified as an industrial activity as defined in 40 CFR Part 122.26 (b) (14) (x), which discharge stormwater to Waters of the U.S., should use the General Permit unless EPA has notified FDOT to obtain an Individual Permit. To use the General Permit, a Notice of Intent (NOI) must be submitted to the EPA at least two days before any soil disturbing activities take place. The NOI is a formal document that will be processed by the FDOT District Permit Coordinator. Before submitting the NOI, a Storm Water Pollution Prevention Plan (SWPPP) must be prepared in consultation with Design, Construction and Environmental personnel, as required.

The EPA Stormwater General Permit discusses two types of requirements for the SWPPP. The first type is a physical requirement that specifies the erosion and sediment controls that must be used and the inspections that must be performed. The second type is a documentation requirement containing the FDOT sediment and erosion control plan, a contractor prepared Section 104 Erosion Control Plan, and several certifications. Details regarding NPDES permit requirements and processing procedures are located in the FDOT Erosion and Sediment Control Handbook, FDOT Procedure No. 650-040-003, titled *NPDES General Permits for Storm Water Discharge from Construction Activities*, and the March 13, 1998 publication of the Federal Register.

10-2.9 NPDES Municipal Separate Storm Sewer System (MS4)

An NPDES MS4 is a municipal storm sewer system which conveys and discharges only stormwater. The NPDES program divides MS4's into two categories: (1) large MS4s - systems serving a population of 250,000 or more; and, (2) medium MS4s - systems serving a population of 100,000 or more but less than 250,000. Currently, only specially designated areas in Florida are subject to the NPDES MS4 program. EPA has designated FDOT a municipality for purposes of this program.

MS4 permits include requirements to effectively prohibit non-storm water discharges into the storm sewers, controls to reduce the discharge of pollutants to the maximum extent practicable, and other provisions appropriate for the control of potential pollutants associated with stormwater discharge. These requirements have been designed to facilitate development of site specific permit conditions, an approach which is intended to provide municipal

applicants an opportunity to propose appropriate management programs to control pollutants in discharges from their municipal systems.

Applicants for an NPDES MS4 permit may apply individually or become co-applicants with counties, municipalities, cities, etc. FDOT has elected to become a co-applicant on NPDES MS4 permits. Where an NPDES General Permit has been issued for a discharge, individual or group applications are not required since the general permit establishes alternative (and typically simplified) requirements for obtaining coverage under the general permit. Permit compliance of an NPDES MS4 permit is shared among co-applicants, depending on jurisdiction.

10-2.10 Army Corps of Engineers

The Army Corps of Engineers (ACOE) has the authority to issue Individual Permits, Regional General Permits, and Nationwide Permits for the construction of structures in or the discharge of dredge and fill material in Waters of the United States, including wetlands. Nationwide Permits (NWPs) are a type of general permit for certain activities resulting in minimal environmental impacts. Most FDOT activities are authorized by one or more of the ACOE's Nationwide Permits. An activity is authorized under a NWP only if all terms and conditions of the NWP have been satisfied. Some NWP conditions identify a "threshold" that if met, requires additional procedures or provisions. Activities that do not qualify for authorization under a NWP still may be authorized by an Individual or Regional General Permit. Language of the NWP should be carefully reviewed to ascertain whether notification to the ACOE is required prior to commencing the authorized activity. For NWPs requiring advance notification, such notification must be made in writing as early as possible prior to commencing the proposed activity.

The ACOE may add activity-specific conditions to the NWP to ensure the activity complies with the terms and conditions of the NWP, and that adverse impacts on the aquatic environment and other aspects of the public interest are individually and cumulatively minimal.

Endangered species and historic properties are given consideration under the ACOE NWP program. No activity is authorized by any NWP if that activity is likely to jeopardize the continued existence of a threatened or endangered species as listed or proposed for listing under the Federal Endangered Species Act, or to destroy or adversely modify the critical habitat of such species. Additionally, no activity which may affect properties listed or properties eligible for listing in the National Register of Historic Places is authorized by the ACOE NWP program until the provisions of 33 CFR Part 325 have been satisfactorily addressed.

10-3 PROCEDURE

The FDOT District Environmental Management Office (DEMO) identifies potential permit involvement at the outset of the project development process, and prepares an Advance Notification (AN) Package and an Environmental Class of Action Determination (ED) form. The DEMO indicates in each of these items of documentation the potential for adverse environmental impacts by the proposed project. The DEMO may also prepare a Permit Coordination Package to distribute to appropriate regulatory and review agencies. This package provides conceptual information on the project to assist the regulatory agencies in defining potential permitting problems.

10-3.1 Advance Notification

The DEMO prepares an AN Package using the Advanced Notification Fact Sheet and distributes it to various State, Federal and local agencies as required by The PD&E Manual Part 1, Chapter 2. If construction activities will occur in, on, or over waters of the United States then the Environmental Determination Form is also prepared and sent to the ACOE. The ACOE will determine whether to become a cooperating agency on the project.

The AN package contains a Fact Sheet which describes the project, specifies all permits potentially required for a project, and states whether the project will occur in navigable waters. The AN process provides the initial opportunity for agencies to become aware of proposed actions by FDOT, provide comment, and share information with FDOT regarding potential impacts associated with the proposed activities.

10-3.2 Class of Action Determination

The DEMO prepares a Class of Action Determination (ED) for each project using the AN Fact Sheet, and submits the form to the FHWA Division Administrator for approval (PD&E Part 1, Chapters 2 and 3). The Federal Highway Administration (FHWA) approves the AN Fact Sheet thereby establishing the class of action for the project (Type 2 Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statements (EIS)), and distributes a copy of the form to the District EMO.

The AN Fact Sheet also includes information concerning navigational requirements for causeways and projects to occur in navigable waters. Based on the information provided on the AN Fact Sheet, FHWA will apply criteria stated in 23 CFR 650, Subpart H to determine if a U.S.C.G. Navigation Permit may be required. If FHWA determines a CG Navigation Permit is required, a copy of the approved form is sent to the CG in accordance with the FHWA/CG Memorandum of Understanding. The CG will review the ED and

determine whether they wish to participate in the project as a cooperating agency. The CG will provide a letter stating their decision to the DEMO.

Projects constructed in waters of the United States may also require authorization from the ACOE. A copy of the approved AN Fact Sheet is also forwarded to the ACOE for review and determination of jurisdiction, and determination for becoming a cooperating agency. The ACOE will provide a copy of their letter of determination to the DEMO.

Circulation of the ED is in accordance with each agency's respective Memorandum of Agreement.

10-3.3 Permit Coordination Package

The DEMO may develop a Permit Coordination Package to enhance interagency communication and coordination early in the process of project development. The Permit Coordination Package provides conceptual information on the project and is circulated to appropriate permit agencies for comments. The package should contain information regarding potential impacts to water quality, wildlife and aquatic organisms (including habitat), and should address issues such as stormwater management, control of erosion and sedimentation prior to, during, and following construction, alteration of natural hydrology, construction sequence, and proposed mitigation measures. The Permit Coordination Package should also contain the following information:

a. Location map indicating project termini and each potential permit site

b. Description of existing and proposed facility, including sketches of the project on aerial photographs

c. General description of project area

d. Site specific information

e. Photographs of each site

f. Discussion of navigational concerns

g. Request for comments

h. Offer of a joint field review upon request

i. Conceptual Stormwater Management Scheme

j. Narrative description of proposed activities

The agencies will provide recommendations and suggestions to FDOT for minimizing potential environmental impacts to facilitate the permitting process. Based on this input the DEMO may modify the project within the limits of prescribed engineering and safety standards. Any resolutions or commitments arising from the Permit Coordination Package effort must be fully documented in the CE, EA, SEIR, or Draft Environmental Impact Statement (DEIS) consistent with PD&E Manual, Part 2 Chapter 18 and Section 10-3.2 of this Chapter. The completeness of this information is essential to alleviate potential delays during the permit application process. Once approved by FHWA, a public hearing may be held and the environmental document provided to all applicable agencies for review and comment. After the public hearing the environmental document is finalized. At this time, the DEMO may proceed to final design of the project and apply for the environmental permits.

For all Type 2 CEs, EAs, and EISs, environmental impacts must be addressed as established in PD&E Manual, Part 2, Chapter 18. The Wetland Evaluation Report (WER) produced during the PD&E phase of development contains identification and description of the wetland resource involved, a wetland functional assessment, an evaluation of options for impact avoidance and minimization, and options for compensatory mitigation of unavoidable impacts. The WER also contains documentation of all consultation and coordination with the ACOE, U.S. Fish and Wildlife Service, EPA, National Marine Fisheries Service (NMFS), DEP, WMDs, and other appropriate Federal, State, and local agencies concerning the impacts of the proposed project on environmental resources.

10-3.4 Mitigation

The environmental permitting criteria requires the protection of wetlands and other surface waters, including fish and wildlife and their habitat. Projects are required to maintain the natural functions of wetlands, or provide appropriate mitigation or compensation. Avoidance and minimization of environmental impacts is the preferred approach recommended by the agencies. If impacts are unavoidable, the applicant must minimize the impact to the extent practicable. The applicant is required to submit an evaluation of alternatives which have been considered to avoid or minimize the proposed impacts. This analysis includes alternative site configurations or reductions in project scope which have been considered. If the agency concurs that the impacts are unavoidable, the applicant must then develop a satisfactory mitigation proposal.

Three types of mitigation are used to counterbalance wetlands and surface water impacts resulting from FDOT activities: avoidance, minimization, and compensation.

Avoidance and minimization should always be the first methods of mitigation utilized to reduce environmental impacts. Compensatory mitigation includes actions such as wetland preservation, restoration, enhancement, and creation; other surface water improvements, uplands preservation and conservation conducted according to the provisions of Section 373.4137, F.S.; or, through an individual project conceptual mitigation plan. Mitigation required may vary depending on the agency, the type of wetland system, the quality of the wetland, and extent of impacts. Appropriate mitigation is determined by the relationship of the size, type, function, and quality of the wetlands to be impacted, compared to the quality, size, type, and function of the mitigation proposal. Wetland quality considerations include such items as regional significance, habitat value for endangered and threatened species, comparative replacement of wetland values and post-development surroundings.

The provisions of Section 373.4137, F.S., state that FDOT will fund mitigation of environmental impacts resulting from transportation construction activities by paying a rate of $75,000 per impact acre, and provide an inventory to the WMDs of environmental impacts estimated to occur within the next three years. To facilitate WMD planning activities, FDOT has agreed to include all projects proposed for construction within the next five years, based on the adopted five-year work program. If Section 373.4137, F.S. is identified as the proposed method of implementing mitigation, conceptual mitigation plans for Type 2 Categorical Exclusions (CE) projects will address conceptual mitigation plans through the following standard statement:

> *Wetland impacts which will result from the construction of this project will be mitigated pursuant to Chapter 373.4137 F.S. to satisfy all mitigation requirements of Part IV, Chapter 373, F.S. and 33 USC.s. 1344.*

For Environmental Assessment (EA) and Environmental Impact Statements (EIS) projects available for public review, the standard statement will be expanded to provide more detailed information for the purposes of public information. EA and EIS projects will address conceptual mitigation plans through the following standard statement:

> *Wetland impacts which will result from the construction of this project will be mitigated pursuant to Section 373.4137, F. S., to satisfy all mitigation requirements of Part IV, Chapter 373, F.S. and 33 U.S.C. s. 1344. Under Section 373.4137, F.S., mitigation of FDOT wetland impacts will be implemented by the appropriate Water Management District where the impacts occur. Each Water Management District will develop a regional wetland mitigation plan on an annual basis to be approved by the Florida State Legislature which addresses the estimated mitigation needs of FDOT. The Water Management District will then provide wetland mitigation for specific FDOT project impacts through a corresponding mitigation project within the overall approved regional mitigation plan. FDOT will provide funding for the Water Management District to implement such mitigation projects.*

Mitigation performed by a WMD must be coordinated with the ACOE and must comply with all State and Federal mitigation requirements. Once payment has been made to the appropriate WMD and the ACOE has concurred on the mitigation project to be implemented, mitigation requirements are satisfied for FDOT.

FHWA will support and fund reasonable levels of compensation for preservation, restoration, enhancement, and creation after avoidance and minimization alternatives have been adequately addressed. All FHWA funding for environmental mitigation, however, must be based on scientifically valid analysis and must show documented support of costs to be incurred to mitigate adverse impacts. Federal funding for compensatory mitigation is permitted in all cases where it can be shown that it is a necessary and reasonable expenditure, however offsite mitigation should have a direct correlation between expected impacts and the mitigation option selected. Benefits gained from the mitigation proposal should approximate anticipated impacts as closely as possible. Where out-of-kind mitigation is proposed, it must be clearly supported through documentation by the appropriate permitting agencies. FHWA requires that every attempt be made to reach resolution with all Federal agencies, the DEP, and WMDs regarding environmental issues and mitigative measures prior to approving the final environmental document.

For those projects which cannot be mitigated due to cost or site availability exercising the provisions of Section 373.4137, F.S., FDOT will develop a project-specific conceptual mitigation plan which identifies the site of proposed mitigation and the general types of mitigation (creation, restoration, enhancement, or preservation) to be utilized.

All mitigation should be summarized in appropriate sections of the EA or DEIS, and all mitigation commitments must be stated in the Commitments and Coordination section. For CE's, coordination is discussed in Item 8 of Form 650-040-02. Details regarding preparation of the environmental documents are located in PD&E Manual, Part 2, Chapter 3.

10-3.5 Permit Application

The permit application process is essentially the same in each FDOT District Office, however, the responsible parties may vary between Districts. Permit application forms and accompanying documents are usually submitted to appropriate permitting agencies by the District Environmental Management Engineer or District Permit Coordinator when design of the project is sixty (60) percent complete. The District Environmental Permit Coordination Section should be copied on all permit applications and related correspondence, such as: drawings, interagency correspondence, all completeness summaries, letters of objection from review agencies and interested parties, and any other correspondence generated in the procurement of environmental permits.

Magnitude of the proposed project, extent of environmental impacts, and individual agency regulatory requirements will affect the amount of time required to obtain the necessary permits. Appendix 1 provides a general scenario of the permit process and the length of time typically required to obtain a permit.

10-3.6 Permit Distribution

Upon receipt of the original environmental permit(s), each District Permit Coordinator will distribute copies of permits to appropriate District Office personnel. The DEMO Engineer will advise the District Project Engineer or contractor regarding general or special requirements stated in the permit document(s).

The District Construction Engineer's Office is responsible for monitoring all permits for expiration dates and advising the District EMO Engineer six (6) months prior to the permit expiration date. DEP and WMD permits may be valid up to five (5) years from date of issuance; ACOE permits require FDOT projects to commence one (1) year from date of issuance and finish within three (3) years; USCG permits require construction to commence three (3) years from date of issuance and be completed within five (5) years of the same date. The expiration dates for local permits will vary.

The permittee (FDOT) is responsible for ensuring compliance with the permit document prior, during, and, after construction. Failure to comply with issued permits may result in enforcement action by the agencies. The District Permit Coordinator is responsible for acquiring necessary permit extensions from the appropriate regulatory agency in the event work will not be completed within the allotted time. Changes in project production schedules may create problems when permits are being processed. Shifts in production scheduling must be coordinated with the DEMO to allow for adequate permit processing time and avoid letting date conflicts.

Once a project is complete, the District Construction Engineer's Office should notify the DEMO Engineer of the project's completion. The District Permit Coordinator must then notify the appropriate regulatory agencies of the project completion by submitting an As-Built or Inspection Certification form. The process of permit distribution is essentially the same in each FDOT District Office, however, responsible parties may vary from District to District.

10-4 REFERENCES

1. Topic No. 650-040-003-d, NPDES Permits for Stormwater Discharge from Highway Construction Sites, February 27, 1995

2. CFR EPA NPDES Permit for Stormwater Discharge from Construction Activities, Published March 31, 1998

3. CFR Volume S7 No.175, Find NPDES General Permit for Stormwater Discharge from Construction Sites, Published September 9, 1992

4. Chapter 373, F.S., Chapter 380, F.S., Chapter 403, F.S.

PERMIT PROCESS

Note: This appendix is intended as a general guide only. The DEMO Engineer and/or District Permit Coordinator should be consulted to determine details regarding formal FDOT procedures.

1. Advance Notification and Permit Coordination Package. Identify potential permit involvement, general extent or informal determination of wetlands, water quality and quantity, issues, etc.

2. Project Design Phase. Final project plans are developed and must accommodate environmental concerns and commitments as set forth in the environmental document. The formal wetlands jurisdictional determination, including survey and agency concurrences, should be complete.

3. Begin Permit Application Preparation. When final design plans are 60% complete, prepare a permit application and develop permit drawings

4. Submit Permit Application. Submit completed permit application 8 to 12 months prior to the District production date.

5. Monitor Permit Application 30 days After Submittal. Approximately 30 days after submittal of the application, check with DEP or delegated WMD for the following items:

    a. application completeness,
    b. additional information submitted,
    c. field comments and biological report request, and
    d. Public Notice published.

6. Monitor Permit Application 45 to 60 Days After Submittal. Approximately 45 to 60 days after submittal of the application, check with DEP or delegated WMD for the following items:

    a. receipt of field comments & biological report,
    b. approval (if required),
    c. other agency approval (if required), and
    d. any adverse comments or any objections as result of public notice.

APPENDIX 1, TYPICAL PERMIT PROCESS (CONTINUED)

7. Monitor Permit Application 60 to 75 days After Submittal. Approximately 60 to 75 days after submittal of the application, check with DEP or delegated WMD for the following items:

    a. receipt of local approval (if required),
    b. submittal of local approval to appropriate agencies, and
    c. address and resolve any comments or objections resulting from the public notice.

8. Monitor Permit Application 75 to 90 days After Submittal. Approximately 60 to 75 days after submittal of the application, check with DEP or delegated WMD for the following items:

    a. anticipated date of intent to issue and/or permit draft, and
    b. particular conditions (if required) to insure acceptability.

9. Issuance of Permit

    a. DEP or delegated WMD shall issue within 90 days of a complete application.
    b. ACOE shall follow DEP or delegated WMD and will usually issue within 2 weeks after receipt of a copy of the DEP or delegated WMD permit.
    c. CG usually will issue within 180 days of a complete application. A copy of the DEP or delegated WMD Permit/Certification is required along with a current environmental assessment of the project.

10. Execution of Permits. FDOT, upon review and acceptance of the approved permit, will execute the permits and, where appropriate, return valid copies to each regulatory agency.

11. Distribution of Executed Permits. All executed permits are distributed to appropriate offices within the Districts by the District Environmental Permit Coordinator.

12. Permit Compliance. The District Environmental Permit Coordinator verifies permit compliance prior to, during, and following construction.

13. Permit Expiration. Approximately six (6) months prior to the expiration of the permit, the District Construction Engineer requests permit extension from the DEMO Engineer, if required.

APPENDIX 1, TYPICAL PERMIT PROCESS (CONCLUDED)

14. Retirement of Permits. The District Construction Office notifies DEMO when a project is complete. The DEMO or the District Construction Office then notifies regulatory agencies of a project's completion by submittal of an As-Built or Inspection Certification.